87-1497

87 No. 1497

IN THE

Supreme Court of the United States

October Term, 1987

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,
Petitioner,

v.

LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S. SANSONE, R. JERRY COOK, HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., AND ARTHUR H. BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

What is the proper statute of limitations period for a collection action brought against an employer by a Taft-Hartley employee benefit fund pursuant to the Labor Management Relations Act of 1947, as amended (LMRA) and Employee Retirement Income Security Act of 1974, as amended (ERISA)?

a. Should the federal courts borrow the forum state's statute of limitation for the most nearly analogous state cause of action, and, if so should that be:

   i. The forum state's wage payment collection statute of limitation,
   ii. The forum state's unwritten contract statute of limitation,
   iii. The forum state's general statute of limitation for actions not otherwise provided for, or
   iv. The forum state's written contract statute of limitation.

b. Should the federal courts borrow a federal statute of limitation, such as the 3 and 6-year statute of limitation provided in ERISA, that will provide uniformity and which will more nearly serve the statutory purposes involved?

NOTE: Although rejected by the Court of Appeals for the Eighth Circuit, Petitioner considers that the issue may be more narrowly and more appropriately described as:

> "The determination of the applicable statute of limitations for actions brought by Taft-Hartley funds under Section 301 LMRA and Section 515 ERISA seeking monetary collections based upon interpretive challenges to expired collective bar-

gaining agreements negotiated between an employer and the union representing its employees."

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The Decision Of The Eighth Circuit Regarding The Appropriate Statute Of Limitations Is In Apparent Conflict With A Prior Holding Of This Court.

and

The Decisions Of The Eighth Circuit, The Third Circuit, The Sixth Circuit And The Ninth Circuit Regarding The Appropriate Statute of Limitations Present An Issue Of National Importance Which Requires Prompt Resolution.

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IN THE

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No. _____

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,
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LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S. SANSONE, R. JERRY COOK, HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., AND ARTHUR H. BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner*, Easter Enterprises, Inc. d/b/a Ace Lines, Inc. (hereinater referred to as "Ace Lines") petitions for a writ of certiorari to review the judgment and decision of the United States Court of Appeals for the Eighth Circuit entered in this case.

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*Petitioner's only affiliate or subsidiary is the Farmers Trust & Savings Bank of Spencer, Iowa.

OPINIONS BELOW

The original order and judgment of the United States District Court for the Southern District of Iowa has been reported at 650 F. Supp. 199 (S.D. Iowa 1985) and is set forth, as amended and modified, in the Appendix as Appendices C, D, and E. Jurisdiction of the District Court was invoked under 29 U.S.C. Section 185(a). The panel opinion and judgment of the Court of Appeals which was reported as *Robbins v. Iowa Roadbuilders, et al.*,** at 824 F.2d 1348 (8th Cir. 1987) and is also set forth in Appendix B. Both sides filed petitions for rehearing alleging the decision of the Court of Appeals for the Eighth Circuit was impracticable. The petitions of Petitioner and Respendent were denied November 24, 1987. [Appendix A]

JURISDICTION

Jurisdiction of this Court to review, by writ of certiorari, the judgment and decision of the United States Court of Appeals for the Eighth Circuit is invoked under 28 U.S.C. Section 1254(1). The decision of the court below issued on September 21, 1987. A timely Petition For Rehearing and Suggestion for Rehearing En Banc was filed, and was denied on November 24, 1987 [Appendix A].

RELEVANT STATUTES

The relevant statutory provisions are as follows:

Section 301(a) of the Labor Management Relations Act, [LMRA], 29 U.S.C. Section 185(a)

(a) Venue, amount and citizenship. Suits for violation

**This case had been consolidated, for purposes of appeal, with a similar case brought by Respondents against Iowa Roadbuilders Co. No petition for writ of certiorari has been filed in that case.

> of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 515 of the Employee Retirement Income Security Act, [ERISA] 29 U.S.C. Section 1145

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collective bargaining agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions or such plan or such agreement.

STATEMENT OF THE CASE

1. *The parties and the 1979-1982 Collective Bargaining Agreement.*

Petitioner, Ace Lines, is incorporated in Iowa and is engaged in the trucking business with its terminals and other operations facilities primarily located in Iowa and Missouri. For at least twenty years, Teamsters Local 147 has been the collective bargaining representative for certain of Ace Lines' employees as specified in the collective bargaining agreements negotiated every three years between Ace Lines and Local 147.

In the 1979 collective bargaining agreement which covered the period April 1, 1979 through March 31, 1982, Ace Lines and Teamsters Local 147 provided that company drivers[1]

[1] Those who drive company owned vehicles as opposed to owner-operators who own the trucks they drive.

would no longer be covered under the Respondent, Central States Southeast and Southwestern Areas Pension Fund but would be covered under a pension program established with Summit National Life Insurance Company. This collective bargaining decision to use a competing pension plan is the essence of the controversy between the Petitioner and Respondents.

2. *Notice of Use of Competing Pension Plan Given to Respondent.*

On September 20, 1979, Teamsters Local 147 sent copies of those contract terms to the International Brotherhood of Teamsters in Washington, D.C., the Central States Conference of Teamsters in Chicago, and to the Respondent, Central States Southeast and Southwest Areas Health and Welfare and Pension Funds.

Respondents' attention was again called to the changes, by a separately filed Fringe Benefit Interim Report for Central States that showed that contributions would be made to Respondents' Central States', health and welfare plan for company drivers but that no contributions would be made to the pension plan for company drivers. Similarly, on October 11, 1979, Ace Lines sent a letter to Central States advising that there was no provision for pension contributions to Central States Pension Fund for company drivers in the collective bargaining agreement. Central States confirmed Ace Lines' understanding in an audit concluded on November 20, 1980 and summarized in a letter dated April 13, 1981 wherein it made no claim for pension plan contributions on behalf of company drivers.

3. *Contract Practices*

Communications, audits and business practices continued in harmony with the express contractual provisions that company drivers were to be covered under a pension plan with Summit National Life Insurance Company and not with Respondent Central States.

4. *1982-1985 Collective Bargaining Agreement*

In the next collective bargaining agreement for the period April 1, 1982 through March 31, 1985, both health and welfare coverage and pension coverage were provided company drivers in plans competing with Respondent Central States' plans.

5. *1985-1988 Collective Bargaining Agreement*

This practice of using competing plans was continued in the contract negotiated between Ace Lines and Local 147 for the period December 15, 1985 through December 14, 1988.

6. *Continuing Contract Practices*

Central States continued to conduct audits and reviews consistent with the collective bargaining agreements' provisions using competing health, welfare and pension plans for company drivers.

7. *Initial Collection Suit*

Respondent, Central States on December 12, 1983, commenced a simple collection action against Ace Lines in the Federal District Court for the Southern District of Iowa, [Appendix H] alleging there was approximately $85,500.00 due Central States from Ace Lines for certain individual employees

who were, it was alleged, not properly reported for the full time of their service. Ace Lines entered into direct discussions with Central States to determine if there had been duplicate reports filed, reporting inaccuracies or proper treatment of billings and credits. As a result of that cooperation and a special audit by Central States of Ace Lines, the amount of the dispute was reduced to less than $40,000.

8. *Amended Petition to Raise "New Interpretive Issues"*

Then on November 8, 1984, Central States moved for Leave to Amend its Complaint and on December 6, 1984, Central States presented its proposed amendment [Appendix F] which raised what Central States called "new interpretive issues". This Complaint alleged that Ace Lines' collective bargaining agreements with Local 147 had been contrary to the National Master Freight Agreement (NMFA) to which it alleged that Ace Lines had been a party at all relevant times. Based on these "new interpretive issues" Central States sought a judgment in excess of $1,000,000 and for attorney fees and costs. Ace Lines resisted and stated that it was not a party to the National Master Freight Agreement and that the amendments raising "new interpretive issues" were, in fact, a new law suit and should be barred by the statutes of limitations.

9. *District Court Ruling*

The U.S. District Court for the Southern District of Iowa concluded[2] in its October 11, 1985 order that

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[2]Central States has not disputed the District Court's characterization, in fact, it has agreed with it. In its appeal brief to the Court of Appeals for the Eighth Circuit, Central States said:

> The gravamen of plaintiffs' claims in the 'First Amended Complaint' was that Ace Lines and IBT Local 147 had executed Riders to the NMFA which were not approved in accordance

> The gravamen of plaintiff's complaint is defendant's alleged failure to comply with its obligations under the collective bargaining agreements. [Appendix E at 25a]

Central States had brought its action to enforce obligations under Section 301(a) of the Labor Management Relations Act of 1947, as amended (LMRA) [29 U.S.C. § 185(a)] and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA) [29 U.S.C. § 1132] as amended by Section 306(a) of the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA) [Pub.L.No. 96-364].

The District Court found that Congress had not provided a statute of limitations specifically applicable to the amended complaint raising the new interpretive issues. It concluded that the appropriate state statute of limitations to borrow was the Iowa Wage Payment Collection Law, Section 91A.4(c), *Code of Iowa* (1985) and the two year statute of limitations applicable to it under Section 614.1(8), *Code of Iowa* (1985). The Court, in its order of March 6, 1986, concluded in response to the Central States' rehearing application that:

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with express provisions of the collective bargaining agreement and, as 'extra-contractual agreements' were unlawful and unenforceable. [CS Brief, 7].

* * *

In fact, the gravamen of Central States' claim against Ace Lines, as set forth in its 'First Amended Complaint,' is that Ace and Local 147 unlawfully modified the terms of the NMFA by executing Riders providing for substandard and/or discriminatory contributions without obtaining approval of the Teamsters Joint Area Conference or National Grievance Committee. *The statute of limitations issue arose as a result of Central States' attempt to enforce the NMFA.* [CS Brief 37 f.n. 14] [emphasis added].

> "The fact that the trust agreements require defendant to make contributions according to the terms of the collective bargaining agreement does not make this a suit under the trust agreements" [Appendix D at 21a]

10. *Interlocutory Appeal*

Central States sought and obtained interlocutory appeal to the Circuit Court of Appeals for the Eighth Circuit which reversed the District Court and held contrary to the Court of Appeals for the Third Circuit that the appropriate state statute of limitations to borrow is the written contract statute of limitations, i.e. Iowa's written 10-year written contract statute of limitations found at Section 614.1(5), *Code of Iowa* (1985). Rehearing petitions by both Petitioner Ace Lines and Respondent Central States were denied November 24, 1987.

REASONS FOR GRANTING THE WRIT

1. The Decision Of The Eighth Circuit Regarding The Appropriate Statute Of Limitations Is In Conflict With The Decisions Of The Third Circuit And The Sixth Circuit

and

2. The Decision Of The Eighth Circuit Regarding The Appropriate Statute Of Limitations Is In Apparent Conflict With A Prior Holding Of This Court.

and

3. The Decisions Of The Eighth Circuit, The Third Circuit, The Sixth Circuit And The Ninth Circuit Regar-

ding The Appropriate Statute of Limitations Present An Issue Of National Importance Which Requires Prompt Resolution.

and

4. The Decisions Of The Eighth Circuit, The Third Circuit, The Sixth Circuit And The Ninth Circuit Regarding The Appropriate Statute Of Limitations Show The Need For A Resolution Giving Uniformity.

ARGUMENT

1. *Split in the Circuits.* The U.S. Court of Appeals in the Third Circuit has twice decided that the forum state's wage payment collection statute is the appropriate state statute of limitations to borrow for contribution collection actions brought by Taft-Hartley funds under Section 301(a) LMRA and Section 515 ERISA. In *Teamsters Pension Trust Fund v. John Tinney Delivery Service*, 732 F.2d 319 (3rd Cir. 1984) and *Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620 (3rd Cir. 1984), the Court of Appeals for the Third Circuit has applied the Pennsylvania 3-year wage payment collection statute of limitations to actions under Section 301(a) LMRA and Section 515 ERISA.

The Court of Appeals for the Sixth Circuit applied the Tennessee 6-year statute for "contracts not otherwise provided for" to a case, such as the instant one, which involves interpretation of collective bargaining agreements and the assertion of ERISA jurisdiction to collect contributions to a pension fund. *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098 (6th Cir. 1986) (banc), cert. denied 107 S.Ct. 1291 (1987).

The Court of Appeals for the Ninth Circuit has borrowed the Alaska 6-year contract statute of limitations applicable to

both unwritten and written contracts when deciding the appropriate statute of limitations for a case involving a collective bargaining agreement, pension contributions, and an assertion of ERISA jurisdiction without assertion of Section 301 LMRA jurisdiction as is alleged here. *Trustees for Alaska Laborers v. Ferrell,* 812 F.2d 512 (9th Cir., 1987).

The holding of the Court of Appeals for the Eighth Circuit in the instant case specifically rejects the holdings in the two Third Circuit cases. It impliedly rejects the holdings of the Sixth and Ninth Circuits when it adopts a 10-year forum state written contract statute of limitations as the one to be grafted to Section 301 LMRA and Section 515 ERISA actions. Only the Seventh Circuit in *Plasterers v. Journeyman Plasterers,* 794 F.2d 1217, (7th Cir. 1986)[3] has adopted such a lengthy statute of limitations or has rejected this Court's holding in *U.A.W. v Hoosier Cardinal Corp.,* 383 U.S. 696, 86 S.Ct. 1107, 16 L.Ed.2d 192 (1966) that a Section 301 LMRA action should borrow the forum state's *unwritten* contract statute of limitations.

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[3]In footnote 8 at 794 F.2d 1217, 1221-2, the Court of Appeals for the Seventh Circuit *expressly* stated *U.A.W. v. Hoosier Cardinal* governs actions jointly brought under Section 301 LMRA and ERISA, as was the instant case, but the Seventh Circuit *mistakenly* concludes that "In applying the Illinois ten-year limitations for written contracts we believe that the district court acted in conformity with *Hoosier Cardinal.*" [See extended quotations from *Hoosier Cardinal* on pages 11, 12 and 13 of this Petition]. This Court, in *Hoosier Cardinal* expressly used the unwritten contract statute of limitations in Section 301 LMRA actions. It should also be noted that the Seventh Circuit did not have before it a wage payment collection statute and the quoted language from the footnote is not part of the holding. Nevertheless, it demonstrates further conflict in the Circuits.

The Courts of Appeal for the Third, Sixth, Eighth[4] and Ninth Circuits have rendered decisions on this issue which are irreconcilable. That it has arisen in four circuits shows its impact, that it has resulted in conflicting and irreconcilable decisions shows the need for this Court to issue a writ of certiorari so the conflict may be resolved on this crucial issue.

2. *Apparent Conflict with Prior Holding of This Court.* This Court in *U.A.W. v. Hoosier Cardinal Corp.*, applied the Indiana 6-year unwritten contract statute of limitation to an action brought under Section 301 LMRA to enforce terms of a written collective bargaining agreement providing for certain "fringe" benefits. The assertion of the union that the Indiana written contract statute of limitations should apply was rejected by this Court when it stated.

> Section 301 of the Labor Management Relations Act, 1947, confers jurisdiction upon the federal district courts over suits upon collective bargaining contracts. Nowhere in the Act, however, is there a provision for any time limitation upon the bringing of an action under Section 301. The questions presented by this case arise because of the absence of such a provision. (At pp. 697-8)

* * *

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[4]The Eighth Circuit Court of Appeals does not appear to be consistent with itself in deciding cases involving the appropriate statute of limitations for Section 301 LMRA and Section 515 ERISA actions. See the subequent opinion in *Central States Southeast and Southwest Areas Pension Fund, etc., et al. v King Dodge, Inc.*, _____ F.2d _____ (8th Cir. No. 86-2050, December 23, 1987) [Appendix I] wherein the panel appears to suggest that there may be validity in the "Illinois Trust Agreement" contract statute of limitations theory advanced by Central States and expressly rejected by the Eighth Circuit panel in this case which preceded the *King Dodge* decision by one month.

The union argues that if the timeliness of this action is to be determined by reference to Indiana statutes, federal law precludes reference to the Indiana six-year provision governing contracts not in writing. Reference must be made instead, it is urged, to the Indiana 20-year provision governing written contracts. Ind. Stat. Ann. Section 2-602 (1965 Supp.). This contention rests on the view that under federal law this Section 301 suit must be regarded as exclusively bottomed upon the written bargaining agreement. We agree that the characterization of this action for the purpose of selecting the appropriate state limitations provision is ultimately a question of federal law. (At pp. 705-6)

* * *

Applying this principle, we cannot agree that federal law requires that this action be regarded as exclusively based upon a written contract.... The petitioner seeks damages based upon an alleged breach of the vacation pay clause in a written collective bargaining agreement. Proof of the breach and of the measure of damages, however, both depend upon proof of the existence and duration of separate employment contracts between the employer and each of the aggrieved employees. Hence, this Section 301 suit may fairly be characterized as one not exclusively based upon a written contract. (At p. 706)

* * *

The six months' provision governing unfair labor practice proceedings, 61 Stat. 146, 28 U.S.C. Section 160(b), suggests that relatively rapid disposi-

> tion of labor disputes is a goal of federal labor law. *Since state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements, their applicability to Section 301 actions comports with that goal.*
>
> Accordingly, we accept the District Court's application of the six-year Indiana statute of limitations to this action. . . . (At p. 707) (Emphasis added)

U.A.W. v. Hoosier Cardinal Corp., 383 U.S. at 697-8 and 705-7.

The instant case not only involves determination of the correct statute of limitation to be borrowed for a Section 301 LMRA action as in *U.A.W. v. Hoosier Cardinal*, but it also requires selection of the correct state statute to be borrowed under Section 515 ERISA. Ace Lines argued and the District Court found that the LMRA contract interpretation issue was the gravamen of Central States amended complaint asserting the "new interpretive issues".

The Court of Appeals for the Eighth Circuit did not explicitly reject this characterization but rather found in this Court's decision in *Schneider Moving Storage Company v. Robbins*, 466 U.S. 364, 104 S.Ct. 1844, 80 L.Ed.2d 366 (1984) a universal characterization of actions brought by trustees of pension funds that predominates over any potential collective bargaining contract issue under Section 301 LMRA. Ace Lines asserts that this is a serious misreading of *Schneider*, and has the effect of impliedly negating the ruling of this Court in *Hoosier Cardinal*, with respect to the appropriate state statute of limitations to be borrowed in a Section 301 LMRA action interpreting and enforcing the terms of a collective bargaining agreement.

When Congress passed MPPAA in 1980, it was aware of

this Court's long standing rule under *Hoosier Cardinal* that the forum states's unwritten contract statute of limitations would apply to Section 301 LMRA actions. In passing MPPAA with this knowledge, Congress expressly tailored the MPPAA obligation to be a second jurisdictional basis for enforcing a collective bargaining agreement not a new and separate cause of action. Congress specifically provided:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collective bargaining agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement. (Section 306 of MPPAA, § 29 U.S.C. § 1145)

Such language when used by Congress can only be considered an incorporation of existing federal labor law under Section 301 LMRA including this Court's ruling in *Hoosier Cardinal*. Indeed, this Court has recognized that in adopting ERISA Congress did not intend to repeal or modify existing federal labor law under Section 301 LMRA. *Kaiser Steel Corporation v. Mullins*, 455 U.S. 72, 102 S.Ct. 851, 70 L.Ed.2d 295.

3. *An Issue of National Importance is Presented Which Requires Prompt Resolution*. Approximately 12,000,000 employees in the United States are covered by collective bargaining agreements. These agreements generally run in length from between 1 to 3 years. They are at the core of a labor policy that has served the United States exceedingly well by replacing violence, threats and abuse with an outstanding record of negotiated resolution of disputes through the collective bargaining process.

The decision of the Court of Appeals for the Eighth Circuit

holds that a nonparty to the labor agreement may, as much as ten years and three or more collective bargaining agreements later, challenge the interpretation of the contracts to which the employer and union parties have expressly agreed and to which they have conformed their conduct and upon which they have relied in making, modifying and adjusting the balances in their relationship from each contract term to the next.

Here the parties agreed to use health and welfare and pension plans that compete with Central States. They did this through the collective bargaining process. They obligated themselves to contracts which were clear and unambiguous in their intent with regard to this issue, and they conformed their conduct to their agreements. Significantly, they told Central States exactly what their agreements were and they informed Central States that competing plans had been selected.

Central States over five years and three collective bargaining agreements later now seeks to raise "new interpretive issues" that contend that the collective bargaining agreements were in violation of the National Master Freight Agreement to which it alleges Ace Lines was a party at all relevant times. The issue, then, is which collective bargaining agreement applies or how inconsistent terms are resolved if both apply. Very simply, this is a fundamental issue of collective bargaining agreement interpretation under Section 301 LMRA. Employers, employees and unions need to know how long Taft-Hartley funds can wait before they are required to assert interpretive challenges to collective bargaining agreements.

This Court must balance the conflicting Courts of Appeals' decisions which have been unable to formulate a common rule. Statutes of limitation cases require predictability of result.

The decision of the Court of Appeals for the Eighth Circuit

presents a serious threat to the stability and predictability of collective bargaining agreements and allows collective bargaining interpretation challenges to be brought so late that compromise and resolution are impossible because the accumulated dollars are so large as to be economically ruinous to the employer if it looses. Even more significant, such a long statute of limitations denies the parties the opportunity to adjust their relationship in the next collective bargaining agreement they negotiate.

A reasonable statute of limitations would enable the parties to address disputed issues in their next contract. It would not permit a challenging party the opportunity to delay for ten years and three or more contracts, before raising a challenge of which it was aware. Such a long period of possible challenge puts employers and unions on notice that participating in multi-employer Taft-Hartley pension funds could be ruinous on some later thought up theory of the third-party fund trustee. This establishes a strong economic disincentive to be a participant in a multi-employer pension fund. Such a bizarre result is in conflict with the very purposes of the federal labor policies embodied in and served by the NLRA, LMRA, ERISA and MPPAA.

Finally, trust funds themselves, need to know with certainty how long they may sit on their rights. When they are aware of collective bargaining challenge, they need to know by what date they must assert their claims. This cannot be left to conflicting and ambiguous court decisions.

There are over 500,000 employers in the United States contributing to about 2,000 multiemployer plans covering an estimated 8,000,000 workers and retirees. Bruce, Stephen R. *Pension Claims Rights & Obligations,* B.N.A. 1988, p. 626. Given the importance of the question to these employers,

employees and plans, it cannot be doubted that the issue is one of genuine national importance.

4. *The Need for Uniformity.* Ace Lines is mindful of the constraints of the rationale in *Wilson v. Garcia,* _____ U.S. _____ 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985), but there is a need for national uniformity and predictability in the choice of the statute of limitations for Section 301 LMRA and Section 515 ERISA actions.

It may be that the inability of the Third, Sixth, Eighth and Ninth Circuits to agree suggests that individual state statutes of limitations be rejected in favor of the 3 and 6 year ERISA statutes of limitations[5] which distinguish between claims involving actual knowledge of the existence of the claim and those claims where such knowledge was lacking. This Court's decision in *Del Costello v. International Brotherhood of Teamsters,* 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983) contains a recognition not only of the need to move labor disputes to a speedy resolution, but as well, the need for a uniform national policy on certain federal labor law statutory claims. Consideration should be given to resolving the existing split in the circuits in accord with the *Del Costello,* rationale rather than the *Wilson v. Garcia,* rationale.

This Court has made it clear in *Kaiser Steel v. Mullins,* 455 U.S. 72, 102 S.Ct. 851, 70 L.Ed.2d 295 (1982) that Congress did not intend, by adopting the ERISA, to repeal "the labor laws, and any other statute which might be raised as a defense to a provision of the collective bargaining agreement requir-

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[5]For the ERISA 3 year statute of limitations *See:* 29 U.S.C. § 1113(a)(2); 1370(f)(1)(B) and 1451(f)(2) and for the ERISA 6 year statute of limitations. *See:* 29 U.S.C. § 1113(a)(1); 1370(f)(1)(A) and 1451(f)(1).

ing an employer to contribute to a pension fund", *Kaiser Steel Corporation v. Mullins,* 455 U.S. 78 at 88.

As in *Agency Holding Corp. v. Malley-Duff Associates,* _____ U.S. _____, 107 S.Ct. 2759, 2764 (1987), both parties have argued for a uniform and predictable statute of limitation. Central States and Ace Lines both filed petitions for rehearing before the Court of Appeals for the 8th Circuit and both argued that the court's holding was unworkable as a practical matter. This Court, in another statutory context, has recognized in *Agency Holding v. Malley-Duff Associates,* 107 S.Ct. at 2765, that "the federal policies at stake and the practicalities of litigation [can] strongly suggest" a need for a federal limitations period that is uniform rather than relying on disparate and conflicting state statutes of limitations.

Unlike the problems with RICO, this Court need not go to another federal statute such as the Clayton Act to find an appropriate statute of limitations, it need only look to the limitations periods contained within ERISA but which Congress did not expressly make applicable to a collection action to enforce a collective bargaining agreement under Section 515 of ERISA.

The need for a uniform national statute of limitations for ERISA collection actions has been recognized by the Court of Appeals of the Ninth Circuit.

> . . . [t]here are strong reasons for creating a uniform federal rule governing the limitation of actions for collection of delinquent ERISA contributions — including the fact that multiemployer trust funds may cover employers operating in a number of states. . .

Hawaii Carpenters v. Waiola Carpenter Shop, Inc., 823 F.2d 289, 297 (9th Cir. 1987).

Only by a resolution in this Court, can a prompt end be put

to the confusion and ambiguity raised by the conflicting circuit Courts of Appeal decisions which provoke litigation and risk severe, unexpected and unbargained for economic loss by employees, employers, and Taft-Hartley trust funds.

CONCLUSION

Decisions that the Third, Sixth, Eighth and Ninth Circuit Courts of Appeals amply demonstrate that there is not only a split in the circuits but almost complete diversity of opinion, rationales and holdings. In any important area of law such a state would not long be tolerable, in this crucial area affecting the economic survival of employers and employees it demands immediate attention.

It would be difficult to overstate the nationwide significance raised by this serious question on which the circuit courts of appeals have been unable to agree. There must, at a minimum, be predictability of result and, if at all possible, uniformity of result. Only this Court can provide either, unless Congress acts to supply a statute of limitation—something it thus far not done. It is difficult to argue that further delay in resolving this conflict serves a useful purpose let alone a useful purpose which outweighs the serious damage being caused by not resolving the split between the circuit courts of appeals.

The Third, Sixth, Eighth and Ninth Circuits have dealt squarely with the statute of limitations issue and the Seventh Circuit has commented upon it. Little guidance will be obtained by further circuits coming to the wilderness and much will be lost through forum shopping, needless procedural litigation, uncertainty and conflicting state statutes of limitations, as parties are forced to relitigate an already irreconcilable set of federal circuit courts of appeals rationales and holdings.

Petitioner and Respondent fairly represent the thousands of multi-employer pension plans, the hundreds of thousands of employers participating in such plans and the millions of workers and retirees covered by such multi-employer plans. These plans and the affected employers, employees and unions will suffer substantial loss or injury, solely as a result of the existing and irreconcilable conflict in the decisions of the five circuit courts of appeals that have dealt with the issue. Very simply, the failure to issue the writ of certiorari will cause great harm and serve no useful purpose. The harm here is the pernicious injury caused not by having made the wrong decision, but by having imposed on employers, employees, unions and Taft-Hartley funds rules that are inconsistent, conflicting and irreconcilable. A final decision on a procedural point of this magnitude must be made. Only this Court can do that. It is respectfully submitted that the time to do it is now.

Respectfully submitted,

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